M.U. and FEDERATION REPORTS.

WONG POH (f) v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Hill, J.) July 1, 1947]
[Kedah — Criminal Appeal No. 36 of 1947]

Kedah Sanitary Boards Enactment S. 13 — Kedah Sanitary Boards (Amendment) Enactment No. 7 of 1358 Ss. 2 and 3 — Whether bye-laws are ultra vires — Interpretation Ordinance S. 11.

The Kota Star Town Board on 18/8/46 appointed a sub-committee to consider the question of unauthorised buildings in the town area which recommended the demolition of all such erections by the end of December 1946. These recommendations were accepted by the Board and a notice dated 30/9/46 was served on the appellant on 6/10/46 demanding demolition of a shed at No. 5 Back Lane, Pekan Malayu, Alor Star, erected by the appellant during the Japanese occupation. This shed appeared to have been put up without any written authority from the Sanitary Board.

The notice was ignored and the appellant was charged before the Magistrate at Alor Star under section 13, Building Bye-Laws, Kedah Enactment No. 106 (Sanitary Boards) for non-compliance of the requirements of this notice and was convicted and fined $200/-- in default one month's R.I. and an order was made empowering the Sanitary Board to demolish the shed within two weeks, expenses to be borne by the appellant.

Against this decision the appellant appeals. The grounds of appeal briefly are as follows:—

(a) The Notice, purporting to be a Notice served in pursuance of Bye-Law 13 made under Sanitary Boards Enactment 106, is vague and uncertain in its terms and is therefore bad;

(b) There was no evidence that the Sanitary Board considered the appellant's premises or decided that they were unsuitable, and the Notice is therefore bad;

(c) The said Bye-Law is ultra vires being a Bye-Law which the Authority has no power to make under the Sanitary Boards Enactment 106;

(d) The said Bye-Law has ceased to be in existence as Section 4 of the Sanitary Boards Enactment 106 which provides for what objects Bye-Laws may be made and Section 5 which empowers the making of Bye-Laws were repealed by Sections 2 & 3 of the Sanitary Boards (Amendment) Enactment No. 7 of 1358.

Held, (1) that notices under the Sanitary Bye-Laws to demolish unauthorised buildings must be clear and unambiguous but as the objection in this case was purely technical the notice was good; (2) the Bye-Law was prolonged in its effect by virtue of S. 11 of the Interpretation Ordinance and was therefore not **ultra vires.**

CRIMINAL APPEAL.

T. E. Conaghan for the Appellant.

C. V. Boyle for the Respondent.

Hill, J. : — The grounds of appeal were argued most persuasively by Mr. Conaghan and I have given them the careful consideration they deserve.

With regard to (a) of the grounds of appeal it was argued that because the words "to the locality" were omitted after the word "immediately" the notice served on appellant was vague and uncertain and therefore bad.

While it is true that such notices must be clear and unambiguous, I consider the objection in this instance to be merely technical and I rule that the notice was good.

With regard to (b), it appears that the Board considered and adopted a report by a Committee appointed by it. This report submitted that the shed was unsuitable to the town and dangerous to health. This ground of appeal must therefore also fail.

With regard to (c) and (d), it is correct that Sections 2 and 3 of the Sanitary Boards (Amendment) Enactment No. 7 of 1358 repealed Section 5 but these sections must also be regarded as re-enactments and further, I can only construe Section 11 of the Interpretation Ordinance, if it is to have any meaning, as prolonging the Bye-Law. I therefore rule that this Bye-Law is not *ultra vires.*

Finally, I have to consider the sentence. I was informed that not only was this the first case of this kind brought before the Court but that appellant has no previous convictions of any sort.

I am of opinion that the imposition of the maximum sentence was unduly severe. While therefore I dismiss the appeal and confirm the conviction and order of demolition, I reduce the fine imposed to one of $50/- (fifty dollars).

Sentence Reduced.

IN RE THE ESTATE OF LAM CHEE TONG (DECEASED).

[Orig. Civil Juris. (Carey, J.) October 31, 1947]

Will — Construction — Meaning of "children" — Whether adopted children are included — Adoption of Children Ordinance No. 18 of 1939.

The question raised in this Originating Summons was whether upon the true construction of the last will of Lam Chee Tong, deceased, the words "child (or children)" appearing in the certified English translation of the Will meant and included the adopted children of the said deceased. The facts were that at the time of making the Will, the testator was married and had no legitimate children but had two adopted children in Malaya and one in China.

Held, (1) that the term "children" in a Will **prima facie** means legitimate children; (2) that in the cases in which the term children had been held to include "adopted children" there was in the Will an intention expressed by the testator or necessarily implied from the wording of the Will or surrounding circumstances that the testator intended in using the word "children" **to**